

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
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January 9, 1997

VIA FEDERAL EXPRESSOffice of the Secretary
Federal Communications Commission
1919 M St., N.W. Room 222
Washington, D.C. 20554

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Re: CC Docket No. 96-45

FEDERAL RESERVE

Gentlemen:

Please find enclosed for filing an original plus four copies of the REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE RECOMMENDED DECISION in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

A handwritten signature in cursive script that reads 'Gretchen Dumas'.
Gretchen Dumas
Attorney for California

GTD:cdl

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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ADJUTANT

In the Matter of

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FCC 96-93

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CC Docket No. 96-45

Federal-State Joint Board on
Universal Service

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**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
ON THE RECOMMENDED DECISION**

PETER ARTH, JR.
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GRETCHEN DUMAS

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January 9, 1997

Attorneys for the Public Utilities
Commission of the State of California

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit these reply comments to the Federal Communications Commission ("FCC") on the Recommended Decision by the Federal -State Joint Board on Universal Service.

California shares the Public Utilities Commission of Ohio's¹ concern that enlistment of intrastate revenues will have upward pressure on intrastate rates and may amount to regulation of intrastate services by the FCC. California similarly is troubled about the legality of the Joint Board's proposal to use intrastate funds to fund the federal universal service program.

California agrees with parties that argue that the Commission must take into account the burden imposed by the funding requirements of its proposed high cost assistance programs when determining the scope of these programs. California agrees with AirTouch that the Commission should consider the efficiency losses suffered by telecommunications consumers and providers as a result of raising the funds necessary to support universal service.² As AirTouch points, out universal service assessments may also depress demand for services resulting in an overall welfare loss not just a transfer between one group and another.³ California also shares the concerns of the Illinois Commerce Commission that the lack of concrete estimates on the size of most of the

¹ Comments of Public Utilities Commission of Ohio, pg. 24, 25.

² AirTouch Comments 13.

³ AirTouch Comments 5.

programs discussed in the Recommended Decision creates an open ended funding obligation for telecommunications providers and end users.⁴ Without knowing the scope and magnitude of the new fund, it is difficult to determine the relationship between the benefits and costs of the Joint Board's proposal. California urges the Commission to create a fund which correctly balances the benefits of supported services with the costs to consumers and providers.

California does not believe as several parties suggest that the Joint Board's Recommendation should be modified to increase subsidies for business customers. In its recent universal service decision, California decided not to support business lines of any type in part because business customers are expected to be an attractive market in a competitive environment.⁵ California believes that some parties' comments reflect a misunderstanding of the relationship between costs and rates for business.⁶ For example, in its most recent rate case for California's two largest local exchange carriers—GTE California and Pacific Bell--the CPUC adopted measured business rates based on the LEC's embedded costs.⁷ This was not the case for residential rates.⁸ In addition, unlike residential measured rate service for California's two largest LECs, the measured business rate does not include any calling allowance, so all

⁴ Illinois Commerce Commission Comments 6.

⁵ California PUC D.96-10-066, pp. 95-96.

⁶ Office of Advocacy of the U.S. Small Business Administration Comments p. 7

⁷ California PUC D.94-09-065, p. 49.

⁸ Id., pp 45-46.

local calls result in revenue for the LEC. California does not believe business customers need to be subsidized; however, if any federal support is directed to business lines for non-rural carriers it must, at a minimum, recognize that residential and business customers generate different levels of revenues.

Finally, a number of commentators representing the cellular industry as a whole and individual cellular companies stated in their comments that the Joint Board incorrectly found that states can require commercial mobile radio services (CMRS) providers to contribute to state universal service programs. The Joint Board found that "section 332(c)(3) [47 U.S.C. section 332(c)(3)] does not preclude states from requiring CMRS providers to contribute to state support mechanisms. In addition, section 254(f) [of the Federal Telecommunications Act, 47 U.S.C. 254(f)] requires that all contributions to state support mechanisms be equitable and nondiscriminatory." Federal-State Joint Board on Universal Service, CC Docket No. 96-45., paragraph 791. California has consistently held that CMRS providers are obliged under both state and federal law to contribute to California's universal service programs. See California PUC D.96-10-066, pg. 190 and D.94-09-065, (56 CPUC 2d 117, 266). California has taken this position because of its belief that cellular customers benefit from universal service in the same way that landline customers benefit. Furthermore in the new competitive world, cellular carriers may well be the telephone company used by a high cost customer and therefore be eligible for the universal service subsidy.

As for whether under federal law states are exempted from requiring CMRS providers from contributing to state universal service programs, the

federal legislation that deals with this issue is the Federal Telecommunications Act of 1996 (Act). Section 254(b)(4) of the Act (47 U.S.C. 254(b)(4)) requires that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." Section 254(f)(47 U.S.C. 254(f)) states that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." Both of these sections clearly give states the authority to require CMRS providers to contribute to state universal service programs.

Dated: January 9, 1997

Respectfully submitted,

PETER ARTH, JR.
LIONEL B. WILSON
GRETCHEN DUMAS

By:

A handwritten signature in cursive script, appearing to read "Gretchen Dumas", written over a horizontal line.

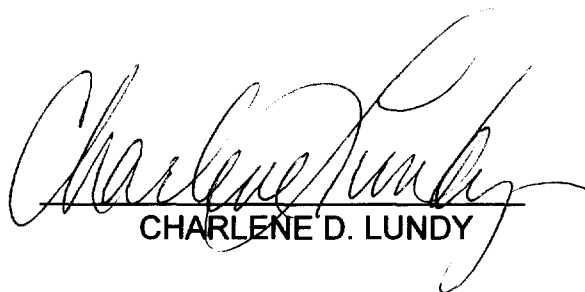
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Commission of the State of
California

CERTIFICATE OF SERVICE

I, Charlene D. Lundy, hereby certify that on this 9th day of January, 1997, a true and correct copy of the foregoing REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE RECOMMENDED DECISION in FCC Docket No. 96-93 was mailed first class, postage prepaid to all known parties of record.



CHARLENE D. LUNDY